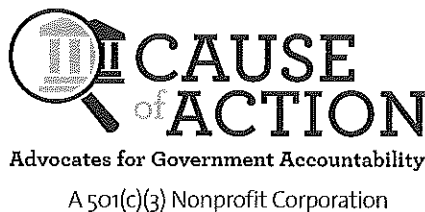


EXHIBIT

1



October 9, 2012

VIA E-MAIL AND CERTIFIED MAIL

Ava Littlejohn, Public Liaison
Internal Revenue Service
Disclosure Scanning Operation - Stop 93A
Post Office Box 621506
Atlanta GA 30362-3006
Email: Ava.F.Littlejohn@irs.gov

RE: Freedom of Information Act Request

Dear Ms. Littlejohn,

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that uses investigative, legal, and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity. We write to request information pursuant to the Freedom of Information Act (FOIA).¹

Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. In addition to the IRC's confidentiality requirements, no officer or employee of the United States "shall disclose any return or return information obtained by him in any manner[.]" The IRC defines "return information" to include a taxpayer's identity and the nature, source, or amount of his or her income.

However, the IRS is authorized to disclose tax return information to the President of the United States. IRC § 6103(g) states,

Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request.

Therefore, in accordance with FOIA, Cause of Action requests that the DOJ produce, within the next twenty (20) business days, the following documents within the possession, custody, and control of the IRS, from the time period of January 1, 2009 to the present:

¹ 5 U.S.C. § 552, *et seq.*

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- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or “return information” within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1),² (i)(2),³ and (i)(3)(A);⁴
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 “return information” to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under §6103(g)(1).

Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose).

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents shall be furnished without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or

² IRC § 6103(i)(1)(Disclosure of returns or return information to Federal officers or employees upon the grant of an ex parte order by a Federal district court judge or magistrate for use in Federal non-tax criminal investigations).

³ IRC § 6103(i)(2)(Disclosure of return information other than taxpayer return information to Federal officers or employees for use in Federal non-tax criminal investigations, upon request by the head of the agency or Inspector General thereof (or designated officials of the Department of Justice)).

⁴ IRC § 6103(i)(3)(A)(i) (Disclosure of return information other than taxpayer return information to apprise appropriate Federal officials of potential violations of Federal criminal law).

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activities of the government and is not primarily in the commercial interest of the requester.” Cause of Action, in the present matter, satisfies all of the required elements for a fee waiver.

- 1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

First and foremost, “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”⁵ It is for this reason that Cause of Action, a nonprofit, nonpartisan organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom, seeks disclosure of the requested documents. Disclosure of the information requested by Cause of Action in this instance is likely to contribute significantly to the understanding by the public at large of the operations and activities of the federal government as the documents requested concern the performance of the statutory and regulatory duties and responsibilities of the IRS, a federal government agency, in administering the civil and administrative forfeiture processes.

The IRS is funded with taxpayer dollars. As a result, the public at large has a moral and financial interest in knowing whether the IRS is appropriately and fairly executing its duties and responsibilities, especially considering concerns of transparency.⁶ Because of this, the information requested will benefit the public as opposed to the individual understanding of the requester or a narrow segment of interested persons. Disclosure would undoubtedly be of value to members of the public. Thus, this element is met.

- 2) Disclosure of the requested information is not in the commercial interest of Cause of Action.

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code. Our organization is committed to protecting the public’s right to be aware of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. Cause of Action will not make a profit from the disclosure of this information. This information will be used to further the knowledge and interests of the general public regarding the IRS. In the event the disclosure of this information creates a profit motive, it is not dispositive for the commercial interest test; media or scholars could have a profit motive, as long as the dissemination of the information is in their professional capacity and would further the public interest.⁷ Therefore, Cause of Action satisfies this element.

⁵ *Baltimore Sun v. United States Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); *see also Center to Prevent Handgun Violence v. United States Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

⁶ *See supra* note 10.

⁷ *See Campbell v. Department of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

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- 3) Cause of Action has an ability to disseminate the requested information to the public and specifically intends to do so.

Cause of Action intends to make the results of this request available to the public in various medium forms. Cause of Action uses a combination of research, litigation, advocacy, and regularly disseminated publications to advance its mission. Our staff has a combined twenty-nine (29) years of expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases. In addition, Cause of Action will disseminate any relevant information it acquires from this request to the public through its frequently visited website, www.causeofaction.org, which also includes links to thousands of pages of documents Cause of Action acquired through its previous FOIA requests, as well as documents related to Cause of Action's litigation and agency complaints. Lastly, after the production of the requested information, Cause of Action intends to produce a report on the IRS, addressing the concerns that have been raised.⁸ This report may be published at www.causeofaction.org, distributed to the news media, and sent to interested persons through our regular periodicals, including "Agency Check" and "Cause of Action News." An ability to show the presence of a website with occasional, consistent traffic is enough to show that a requester has an ability to disseminate information.⁹ As with the other two (2) outlined above, Cause of Action has also met this element, in effect, justifying a fee waiver.

Cause of Action Is Entitled to News Media Requester Category Status.

Cause of Action also asks that it not be charged search or review fees for this request because it qualifies as a "representative of the news media, or news media requester," under 5 U.S.C. § 552(a)(4)(A)(ii)(II).¹⁰ In *National Security Archive v. U.S. Dep't of Defense*,¹¹ the U.S. Court of Appeals for the District of Columbia Circuit noted that FOIA's legislative history demonstrates that "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which*

⁸ See *supra* note 10.

⁹ See *FedCURE v. Lappin*, 602 F. Supp. 2d 197, 203 (D.D.C. 2009).

¹⁰ Other agencies of the federal government have granted Cause of Action "representative of the news media" category status. See, e.g., FOIA Request HQ-2012-00752-F (Department of Energy), news media status granted on Feb. 15, 2012; FOIA Request No. 12-00455-F (Department of Education), news media status granted on Jan. 20, 2012; FOIA Request 12-267 (Federal Emergency Management Agency), news media status granted on Feb. 9, 2012; FOIA Request 2012-RMA-02563F (Department of Agriculture), news media status granted on May 3, 2012; FOIA Request 2012-078 (Department of Homeland Security), news media status granted on Feb. 15, 2012; FOIA Request 2012-00270 (Department of Interior), news media status granted on Feb. 17, 2012; FOIA Request (Department of Labor), news media status granted on April 20, 2012; FOIA Request CRRIF 2012-00077 (Department of Commerce), interim rolling production of documents on Mar. 1, 2012 without charge; FOIA Request F-2012-25414 (Department of State) news media status granted on June 15, 2012; FOIA Request 12-IGF-OIG-00054 (Department of Housing and Urban Development) news media status granted on July 23, 2012. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Oglesby v. United States Dep't of Army*, agencies should grant news media requestor status when other agencies have done so because of "the need for uniformity among the agencies in their application of FOIA." 920 F.2d 57, 66 (D.C. Cir. 1990).

¹¹ 880 F.2d 1381, 1386 (D.C. Cir. 1989).

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*regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'"*¹²

Cause of Action is organized and operated, *inter alia*, to publish and broadcast news, i.e., information that is about current events or that would be of current interest to the public. Cause of Action routinely and systematically disseminates information to the public through various medium forms. Cause of Action maintains a frequently visited website, www.causeofaction.org. Additionally, since September 2011, Cause of Action has published an e-mail newsletter. This newsletter provides subscribers with regular updates regarding Cause of Action's activities and information the organization has received from various government entities. Cause of Action also disseminates information via Twitter and Facebook. Cause of Action also produces a newsletter titled "Agency Check," which informs interested persons about actions of federal agencies, and another periodical, "Cause of Action News."¹³

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews, and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds, and social and economic freedom; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter, and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news, and journalism. Based on these extensive publication activities,¹⁴ Cause of Action qualifies for a fee waiver as a "representative of the news media, or news media requester," under FOIA and agency regulations.

¹² *Id.* (citing 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)) (emphasis in original).

¹³ CAUSE OF ACTION, *Newsletters*, available at <http://causeofaction.org/newsletters/>.

¹⁴ See, e.g., Matthew Boyle, *Report: ACORN-affiliated group gets \$300,000 more in taxpayer money*, THE DAILY CALLER, (Sept. 16, 2011), available at <http://dailycaller.com/2011/09/16/report-acorn-affiliated-group-gets-300000-more-in-taxpayer-money/>; Matthew Boyle, *Long-time ACORN affiliate secures \$350,000 in new taxpayer funding*, THE DAILY CALLER, (Sept. 19, 2011), available at <http://dailycaller.com/2011/09/19/long-time-acorn-affiliate-secures-350000-in-new-taxpayer-funding/>; Paul Streckfus, *Accountability Group Seeks IRS Investigation of ACORN Affiliates*, EO TAX JOURNAL, Ed. 2011-173, (Oct. 24, 2011); Bobby McMahon, *EPA Stalls Utility MACT Until December, Fights Industry Bid For Year Delay*, INSIDE EPA, (Oct. 24th, 2011), available at <http://insideepa.com/201110212379934/EPA-Daily-News/Daily-News/epa-stalls-utility-mact-until-december-fights-industry-bid-for-year-delay/menu-id-95.html>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-185, (Nov. 9, 2011); Patrick Reis and Darren Goode, *Senators hedge bets ahead of CSAPR vote - Second anti-reg bill to get vote - Perry's debate gaffe - Acrimony hits new heights in Solyndra spat*, POLITICO, (Nov. 10, 2011), available at <http://www.politico.com/morningenergy/1111/morningenergy374.html>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-187, (Nov. 15, 2011); Frank Maisano, *Nov 14 Energy Update: Chu'd Out in Congress*, ENERGY NOW!, (Nov. 15, 2011), available at <http://www.energynow.com/energypanel/2011/11/15/nov-14-energy-update-chud-out-congress>; Conn Carroll, *Labor board broke federal law on Boeing suit*, WASHINGTON EXAMINER, (Nov. 27, 2011), available at <http://campaign2012.washingtonexaminer.com/article/labor-board-broke-federal-law-boeing-suit>; Matthew Vadum, *Obama uses taxpayer cash to back ACORN Name changes used to dodge the law*, WASHINGTON TIMES, (Nov. 28, 2011), available at <http://www.washingtontimes.com/news/2011/nov/28/obama-uses-taxpayer-cash-to-back-acorn-name-change/>; Matthew Boyle, *Obama administration, GAO appear to have ignored group's ACORN affiliation to award \$700K*, THE DAILY CALLER, (Nov. 28, 2011), available at <http://dailycaller.com/2011/11/28/obama->

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Cause of Action's activities clearly fall within the statutory definition of this term. 5 U.S.C. § 552(a)(4)(A)(ii)(III) defines "representative[s] of the news media" broadly to include organizations that disseminate news through electronic communications, including "*publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public.*"¹⁵ Moreover, the FOIA statute itself, as amended in 2007, explicitly defines "representative of the news media"—a term that had previously been undefined in the statute—to specifically include organizations, such as Cause of Action, that regularly publish and disseminate online periodicals, *e.g.*, newsletters.¹⁶ The statutory definition unequivocally commands that organizations that electronically disseminate information and publications via "alternative media *shall* be considered to be news-media entities."¹⁷ As the plain language of the statute makes abundantly clear, then, an organization that regularly disseminates news via an online newsletter or periodical, such as Cause of Action, is a "representative of the news media" under the FOIA.

In *Electronic Privacy Information Center v. Dep't of Defense*, the court broadly construed a Department of Defense regulation defining "representative of the news media" to

administration-gao-appear-to-have-ignored-groups-acorn-affiliation-to-award-700k/; WORLDNETDAILY, *See which radicals got more taxpayer dollars: Support maintained despite organization's accounting 'problems,'* (Nov. 29, 2011), available at <http://www.wnd.com/index.php?fa=PAGE.view&pageId=372685>; Perry Chiaramonte, *ACORN Misused Federal Grant Funds, Report Says*, FOX NEWS, (Nov. 30, 2011), available at <http://www.foxnews.com/politics/2011/11/30/acorn-misused-federal-grant-funds-report-says/>; Marsha Shuler, *Group challenges La. contribution limit*, THE ADVOCATE, (Nov. 30, 2011), available at <http://theadvocate.com/news/1437637-123/group-challenges-la.-contribution-limit>; Margaret Menge, *Justice Audit Alleges ACORN Spin-Off in New York Misused Money*, NEWSMAX, (Dec. 1, 2011), available at <http://www.newsmax.com/US/ACORN-justice-audit-funds/2011/12/01/id/419672>; PITTSBURGH TRIBUNE-REVIEW, *Acorn lives: Meet AHCOA*, (Dec. 5, 2011), available at http://www.pittsburghlive.com/x/pittsburghtrib/opinion/s_770135.html; Tom Fitton, *Obama Administration Violating ACORN Funding Ban According to New Audit*, BIG GOVERNMENT, (Dec. 5, 2011), available at <http://biggovernment.com/tfitton/2011/12/05/obama-administration-violating-acorn-funding-ban-according-to-new-audit/>; NATIONAL RIGHT TO WORK COMMITTEE, *NLRB: Law Breakers?*, (Dec. 10, 2011), available at <http://www.nrtwc.org/nlrw-law-breakers/>.

¹⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(III) (emphasis added).

¹⁶ The FOIA statute, as amended in 2007, defines "representative of the news media" as follows:

[T]he term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), *such alternative media shall be considered to be news-media entities.*

5 U.S.C. § 552(a)(ii)(III) (emphasis added).

¹⁷ *Id.* (emphasis added). See generally *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661-662 (2007) (noting the well-established proposition that, as used in statutes, the word "shall" is generally imperative or mandatory).

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include a 501(c)(3) that, like Cause of Action, maintains a frequently visited website and regularly publishes an e-mail newsletter. Under well-established precedent, then, a 501(c)(3) requester that regularly publishes online newsletters, such as Cause of Action, is entitled to a fee waiver as a "representative of the news media," where the agency's own regulations explicitly provide that "publishers of periodicals" qualify as representatives of the news media.

The information requested regarding the IRS and the Executive Branch, specifically which taxpayers' information the President has attempted to access and the IRS's handling of such requests will be of current interest to a large segment of the general public. Cause of Action will ultimately disseminate this information that it is statutorily entitled to, *inter alia*, through its regularly published online newsletter. Additionally, Cause of Action will take the information that is disclosed, using its editorial skills and judgment, to publish news articles that will be published on our website, distributed to other media sources, and distributed to interested persons through our newsletters.

As outlined above, the plain language of 5 U.S.C. § 552(a)(4)(A)(ii)(III), controlling precedent, and the agency's regulations clearly require the conclusion that Cause of Action is a representative of the news media.

Production of Information and Contact Information

We call your attention to President Obama's January 21, 2009, Memorandum concerning the FOIA, which states in relevant part:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . . The presumption of disclosure should be applied to all decisions involving FOIA.¹⁸

On the same day, President Obama spoke on the FOIA to incoming members of the Cabinet and staff of the White House and stated in relevant part:

The old rules said that if there was a defensible argument for not disclosing something to the American people, then it should not be disclosed. That era is now over. Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information but those who seek to make it known. To be sure, issues like personal privacy and national security must be treated with the care they demand. But the mere fact that you have the legal power to keep something secret does not mean you should always use it. The Freedom of Information Act is perhaps the most powerful instrument we have for making our government honest and transparent, and of

¹⁸ PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, Jan. 21, 2009, available at <http://www.whitehouse.gov/the-press-office/freedom-information-act>.

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holding it accountable. And I expect members of my administration not simply to live up to the letter but also the spirit of this law.¹⁹


If it is your position that any portion of the requested information is exempt from disclosure, Cause of Action requests that you provide a detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.

In the event that some portions of the requested information are properly exempt from disclosure, please redact such portions and produce all remaining reasonable segregable non-exempt portions of the requested record.²⁰ If you contend that information contains non-exempt segments, but those non-exempt segments are so dispersed throughout as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. If a request is denied in full, please outline that it is not possible to segregate portions of the record for release.

In an effort to facilitate record production within the statutory limit, Cause of Action prefers to accept information and/or documents in electronic format (*e.g.*, e-mail, .pdf). When necessary, Cause of Action will accept the "rolling production" of information and/or documents, but requests that you provide prompt notification of any intent to produce information on a rolling basis.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact me (Karen.Groen.Olea@causeofaction.org) or Marie Connelly (Marie.Connelly@causeofaction.org) immediately at (202) 507-5880. Please note that, for the purposes of responding to this request, the attached "Responding to Information Request" and "Definitions" should be interpreted consistently. We look forward to receiving the requested information and a waiver of both search and duplication fees within twenty (20) business days. Thank you for your time and assistance in this matter.

Sincerely,



KAREN GROEN

CHIEF OVERSIGHT COUNSEL

Encl. "Responding to Information Request" and "Definitions"

¹⁹ PRESIDENT BARACK OBAMA, *Remarks by the President in Welcoming Senior Staff and Cabinet Secretaries to the White House*, Jan. 21, 2009, available at <http://oversight.house.gov/hearing/foia-in-the-21st-century-using-technology-to-improve-transparency-in-government/>.

²⁰ See 5 U.S.C. § 552(b).

Responding to Information Requests

1. In complying with this request, you should produce all responsive information and/or documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to Cause of Action.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. Cause of Action's preference is to receive documents in electronic form (*i.e.*, CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce information and/or documents, you should identify the paragraph in Cause of Action's request to which the documents respond.
5. It shall not be a basis for refusal to produce information and/or documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Cause of Action's staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that information and/or documentation is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any information and/or documentation responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this request referring to information and/or document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all information

and/or documents which would be responsive as if the date or other descriptive detail were correct.

11. The time period covered by this request is January 1, 2007 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, e-mail, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, agents, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” when used in a question about an applicant, means to provide the following information: (a) the parties complete name and title; and (b) the parties business address and phone number.
6. The term “referring or relating” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

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- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or “return information” within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1),² (i)(2),³ and (i)(3)(A);⁴
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 “return information” to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under §6103(g)(1).

Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose).

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents shall be furnished without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or

² IRC § 6103(i)(1)(Disclosure of returns or return information to Federal officers or employees upon the grant of an ex parte order by a Federal district court judge or magistrate for use in Federal non-tax criminal investigations).

³ IRC § 6103(i)(2)(Disclosure of return information other than taxpayer return information to Federal officers or employees for use in Federal non-tax criminal investigations, upon request by the head of the agency or Inspector General thereof (or designated officials of the Department of Justice)).

⁴ IRC § 6103(i)(3)(A)(i) (Disclosure of return information other than taxpayer return information to apprise appropriate Federal officials of potential violations of Federal criminal law).

EXHIBIT

2



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

October 31, 2012

Karen Groen
Chief Oversight Counsel
Cause of Action
2100 M Street NW
Suite 170-247
Washington, DC 20037-1233

Dear Karen Groen:

I am responding to your Freedom of Information Act (FOIA) request dated October 9, 2012, that we received on October 10, 2012.

I am unable to send the information you requested by November 7, 2012, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to November 23, 2012, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by November 23, 2012. We have extended the response date to January 31, 2013 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

- Where the records are located, or
- In the District of Columbia

You may file suit after November 23, 2012. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at 801-620-7638 or write to me at: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,



Denise Higley
Tax Law Specialist
Badge No. 0142331
Headquarters (HQ) Disclosure FOIA Group

EXHIBIT

3



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

December 11, 2012

Brandon Sherman
Cause of Action
1919 Pennsylvania Ave., NW
Suite 650
Washington, DC 20006

Dear Brandon Sherman:

This is an interim response letter to your Freedom of Information Act (FOIA) request dated October 9, 2012, that we received on October 10, 2012.

This interim response letter is addressing Items 3, 4, 5, 6, 7, and 8 of your request. Our office is continuing to process Items 1 and 2 of your request.

Your request indicates you are aware that Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. With this understanding, in the context of your FOIA request, you have indicated you are not seeking taxpayer specific information to which you are not entitled under Internal Revenue Code (IRC) section 6103.

In response to Items 3 and 4, you asked for all communications, documents, notes, and emails by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of IRC section 6103(a) that were not made pursuant to IRC section 6103(g).

For the time frame specified in your request, all requests made to the IRS from White House personnel were for "tax checks". These are requests made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. For such prospective employees, "tax checks" are conducted by the IRS at the request of the White House. All such disclosures to the White House of taxpayer specific information with respect to such "tax checks" are made pursuant to the written consent of the prospective employee who signs a waiver authorizing the disclosures of his/her return and return information under IRC section 6103(c). Information with respect to any of the requests is taxpayer specific and subject to the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Items 5 and 6 you asked for all requests, documents, emails, letters, etc., for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2), and (i)(3)(A).

IRC section 6103(i) concerns disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Pursuant to IRC section 6103(i)(1), such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice. Under IRC section 6103(i)(2), disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel, including heads of Federal agencies; and under IRC section 6103(i)(3), the IRS may make such disclosures at our own initiative when necessary to enforce a federal non-tax criminal law, when there is danger of imminent death or physical injury or for purposes of thwarting terrorist activities. Disclosures in all three categories are taxpayer specific such that all information pertaining to disclosures under IRC sections 6103(i)(1), (i)(2) or (i)(3) is protected by the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President.

We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request. If you need more information, you may write to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel – Disclosure Branch
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

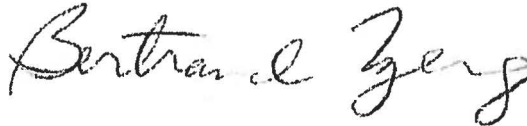
In response to Item 8, you asked from the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under IRC section 6103(g)(1). We found no documents specifically responsive to this portion of your request.

We are granting your request to waive fees associated with this response.

With the final response letter, we will enclose Notice 393 explaining your appeal rights.

If you have any questions please call Tax Law Specialist, Denise Higley, ID# 0142331, at 801-620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,

A handwritten signature in cursive script that reads "Bertrand Tzeng". The signature is written in dark ink and is positioned above the printed name and title.

Bertrand Tzeng
Acting Disclosure Manager
HQ Disclosure Program Operations and FOIA

EXHIBIT

4



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

January 30, 2013

Karen Groen
1919 Pennsylvania Ave NW
Suite 650
Washington, DC 20006

Dear Karen Groen:

I am responding to your Freedom of Information Act (FOIA) request dated October 9, 2012 that we received on October 10, 2012.

On October 31, 2012, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review documents responsive to your request. I will contact you by March 15, 2013, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley
Tax Law Specialist
Headquarters (HQ) Disclosure Office

EXHIBIT

5



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 4, 2013

Karen Groen
Cause of Action
2100 M Street, NW
Suite 170-247
Washington, DC 20037-1233

Dear Ms. Groen:

This is the final response letter to your Freedom of Information Act (FOIA) request dated October 9, 2012, that we received on October 10, 2012.

Request Items 1 and 2

We have located records associated with the litigation filed by your organization concerning such requests and have deemed these records to be responsive to items 1 and 2 of your request.

Of the 796 pages located in response to this portion of your request, we are enclosing 790 pages on the enclosed CD. We are withholding 289 pages in part and 6 pages in full under FOIA exemptions (b)(5) and (b)(6). We are also withholding pages in part that are outside the scope of your request.

FOIA exemption (b)(5) exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. There are three primary privileges covered by this exemption:

- The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.
- The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation, and
- The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

FOIA exemption (b)(6) exempts from disclosure files that, if released, would clearly be an unwarranted invasion of personal privacy. These include medical, personnel, and similar files. We base the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

The redacted portions of each page are marked by the applicable FOIA exemptions.

Your password for accessing the CD is F#13286-0081f. To access the information on the CD, please follow the steps below:

1. Select GuardianEdge Removal Storage Access on your CD.
2. Select the file in the top left.
3. Select "open" file.
4. Select F#13286-0081.
5. Enter password F#13286-0081f.

Request Items 3-7

On December 4, 2012, our office sent an interim response letter addressing Items 3, 4, 5, 6, and 7 of your request. The following is a recap of the information provided in that letter.

Your request indicates you are aware that Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. With this understanding, in the context of your FOIA request, you have indicated you are not seeking taxpayer specific information to which you are not entitled under Internal Revenue Code (IRC) section 6103.

In response to Items 3 and 4, you asked for all communications, documents, notes, and emails by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of IRC section 6103(a) that were not made pursuant to IRC section 6103(g).

For the time frame specified in your request, all requests made to the IRS from White House personnel were for "tax checks". These are requests made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. For such prospective employees, "tax checks" are conducted by the IRS at the request of the White House. All such disclosures to the White House of taxpayer specific information with respect to such "tax checks" are made pursuant to the

written consent of the prospective employee who signs a waiver authorizing the disclosures of his/her return and return information under IRC section 6103(c). Information with respect to any of the requests is taxpayer specific and subject to the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Items 5 and 6 you asked for all requests, documents, emails, letters, etc., for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2), and (i)(3)(A).

IRC section 6103(i) concerns disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Pursuant to IRC section 6103(i)(1), such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice. Under IRC section 6103(i)(2), disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel, including heads of Federal agencies; and under IRC section 6103(i)(3), the IRS may make such disclosures at our own initiative when necessary to enforce a federal non-tax criminal law, when there is danger of imminent death or physical injury or for purposes of thwarting terrorist activities. Disclosures in all three categories are taxpayer specific such that all information pertaining to disclosures under IRC sections 6103(i)(1), (i)(2) or (i)(3) is protected by the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request. If you need more information, you may write to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel – Disclosure Branch
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

Request Item 8

In response to item 8 of your request, the IRS has no record of requests from the White House or President of the United States pursuant to IRS 6103(g)(1).

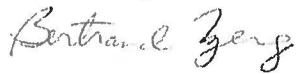
Other Matters

We have granted your request to waive fees associated with this response.

This constitutes a partial denial of your request. We have enclosed Notice 393 explaining your appeal rights.

If you have any questions please call Tax Law Specialist, Denise Higley, ID# 0142331, at 801-620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bertrand Tzeng".

Bertrand Tzeng
Disclosure Manager
HQ Disclosure Program Operations and FOIA

Enclosures:
CD
Notice 393

Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552

Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 35 days after we (1) deny you access to a record in whole or in part; (2) have made an adverse determination as to your category as a requester; (3) deny your request for a fee waiver or reduction; or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal **must** be in writing, must be signed by you, and must contain:

Your name and address,
Description of the requested records,
Date of the request (and a copy, if possible),
Identity of the office and contact on the response letter, and
Date of the letter denying the request (and a copy, if possible)

Mail your appeal to: **IRS Appeals**
Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Ave.
Fresno, California 93727-5136

Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in United States District Court in the district in which (1) you reside; (2) your principal place of business is located; (3) the records are located; or (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeals office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in Federal Rule of Civil Procedure 4(i). In addition to service upon the United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A).

The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC:PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Exemptions

The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are:

- (b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order,
- (b)(2) • related solely to the internal personnel rules and practices of an agency,
- (b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute:
 - (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Note: Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

EXHIBIT

6



April 8, 2013

VIA E-MAIL AND CERTIFIED MAIL

Steven T. Miller, Acting Commissioner
Internal Revenue Service Appeals
Attention: FOIA Appeals
M/Stop 55202
5045 East Butler Avenue
Fresno, California 93727-5136

RE: FREEDOM OF INFORMATION ACT REQUEST (F13286-0081)

Dear Acting Commissioner Miller:

Cause of Action (CoA) is a nonprofit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending, and cronyism threaten it. Pursuant to the provisions of the Freedom of Information Act (FOIA)¹ and the rules and regulations of the Internal Revenue Service (IRS),² CoA hereby submits its appeal of the decision of the IRS to withhold certain documents, in part and in full, that are responsive to CoA's October 9, 2012 FOIA request.³ The IRS improperly withheld certain records and portions therein under FOIA exemptions (b)(5) and (b)(6). The IRS also improperly categorically denied aspects of CoA's FOIA request under exemption (b)(3). Finally, CoA appeals the IRS's FOIA response because it appears that the IRS's search was deficient.

Procedural History

Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. In addition to the IRC's confidentiality requirements, no officer or employee of the United States "shall disclose any return or return information obtained by him in any manner[.]" The IRC defines "return information" to include a taxpayer's identity and the nature, source, or amount of his or her income.

However, the IRS is authorized to disclose tax return information to the President of the United States. IRC § 6103(g) states:

¹ 5 U.S.C. § 552(a)(6) (2013).

² 26 C.F.R. § 601.702 (2013).

³ FOIA Request from Karen Groen, Chief Oversight Counsel, Cause of Action, to Ava Littlejohn, Public Liaison, Internal Revenue Service (Oct. 9, 2012) [hereinafter "CoA's FOIA Request"].

Mr. Steven T. Miller
April 8, 2013
Page 2

Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request.

In accordance with FOIA, Cause of Action requested in an October 9, 2012 FOIA request that the IRS provide the following information from the time period of January 1, 2009, to October 9, 2012:

- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1), (i)(2), and (i)(3)(A);
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 "return information" to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under § 6103(g)(1).⁴

⁴ *Id.* at 2.

Mr. Steven T. Miller
 April 8, 2013
 Page 3

On October 31, 2012, the IRS acknowledged receipt of the request, assigned the request case number F13286-0081, and requested an extension of the response date to January 31, 2013.⁵ On December 11, 2012, the IRS issued an interim response to CoA, denying Items 3-6 on the basis of FOIA exemption (b)(3) and IRC section 6103(a), and denying Item 8 on the basis that the IRS found no “specifically responsive” documents.⁶ The IRS also informed CoA that it had transferred Item 7 to the Treasury Inspector General for Tax Administration (TIGTA).⁷ In this same letter, the IRS granted CoA a complete fee waiver.⁸

On January 30, 2013, the IRS again requested an extension of the response date to March 15, 2013.⁹ The IRS issued a final response on March 4, 2013 (received by CoA on March 15, 2013), informing CoA that it had located 796 pages of records responsive to Items 1 and 2 of CoA’s October 9, 2012 FOIA request.¹⁰ The IRS withheld 289 of these pages in part and six of these pages in full under FOIA exemptions (b)(5) and (b)(6).¹¹ This production marks the final response to CoA’s October 9, 2012 FOIA request. CoA is entitled to seek an administrative appeal within 35 days of the final response.¹²

The IRS Improperly Withheld and Redacted Responsive Documents

The IRS improperly withheld in full six documents that are responsive to Items 1 and 2 of CoA’s FOIA Request, claiming FOIA Exemptions 5 and 6. It also improperly redacted 289 documents that it produced as responsive to Items 1 and 2, claiming those same exemptions. While the redacted documents contain an indication of the particular exemption claimed for each redaction, the IRS’s response does not specify how many of the six withheld-in-full documents are withheld under Exemption 5 and how many are withheld under Exemption 6. Accordingly, CoA has no choice but to assume, for purposes of this appeal, that all six documents were withheld under both exemptions. As explained below, the IRS has improperly relied on FOIA Exemptions 5 and 6 as a basis for its withholdings and redactions, and its refusal to produce the requested records in full violates FOIA.

FOIA mandates “a general philosophy of full agency disclosure”¹³ and “creates a liberal disclosure requirement, limited only by specific exemptions which are to be narrowly construed.”¹⁴ Exemptions to FOIA are “limited” in nature and must “not obscure the basic

⁵ Letter from Denise Higley, Tax Law Specialist, Internal Revenue Service, to Karen Groen, Chief Oversight Counsel, Cause of Action (Oct. 31, 2012).

⁶ Letter from Bertrand Tzeng, Acting Disclosure Manager, Internal Revenue Service, to Brandon Sherman, Cause of Action, at 1-2 (Dec. 11, 2012) [hereinafter “IRS Interim Response”].

⁷ *Id.* at 2.

⁸ *Id.*

⁹ Letter from Denise Higley, Tax Law Specialist, Internal Revenue Service, to Karen Groen, Chief Oversight Counsel, Cause of Action (Jan. 30, 2013).

¹⁰ Letter from Bertrand Tzeng, Disclosure Manager, Internal Revenue Service, to Karen Groen, Chief Oversight Counsel, Cause of Action, at 1 (Mar. 4, 2013) [hereinafter “IRS Final Response”].

¹¹ *Id.*

¹² 26 C.F.R. § 601.702(c)(10).

¹³ *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) quoting S. Rep. No. 813, at 3 (1965).

¹⁴ *Bristol-Myers Co. v. Fed. Trade Comm’n*, 424 F.2d 935, 938 (D.C. Cir. 1970).

Mr. Steven T. Miller

April 8, 2013

Page 4

policy that disclosure, not secrecy, is the dominant objective of the Act.”¹⁵ President Obama emphasized the significance of FOIA’s regime of open disclosure when he stated:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA The presumption of disclosure should be applied to all decisions involving FOIA.¹⁶

The IRS Improperly Applied Exemption 5

FOIA Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.”¹⁷ To assert this exemption, the agency must provide sufficient specificity to permit CoA (and the IRS Office of Appeals) to understand its rationale for withholding the responsive information.¹⁸ Not only must the agency identify the particular privilege invoked, it must identify the particular issue or policy to which the redacted information contributed.¹⁹ The IRS has failed to meet this standard and has instead provided a general, conclusory statement invoking Exemption 5, stating only that “there are three primary privileges covered by this exemption...”²⁰

The IRS Improperly Applied Exemption 6

Exemption 6 of FOIA exempts “personnel and medical files and similar files” (PMSF) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”²¹ However, to assert this exemption, “the threshold question is whether the requested information is contained in a personnel, medical, or similar file.”²² The D.C. Circuit has explained that this exemption was designed to shield individuals from the disclosure of “intimate personal details.”²³

¹⁵ *Rose*, 425 U.S. at 361.

¹⁶ President Barack Obama, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act* (Jan. 21, 2009) available at <http://www.whitehouse.gov/the-press-office/freedom-information-act>; see also Memorandum from Attorney General Eric Holder for Heads of Exec. Dep’ts and Agencies (Mar. 19, 2009) (“The [FOIA], 5 U.S.C. § 552, reflects our nation’s fundamental commitment to open government As President Obama instructed in his January 21 [2009] FOIA Memorandum, ‘The [FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails.’ This presumption has two important implications. First, an agency should not withhold information simply because it may do so legally. . . . Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure.”).

¹⁷ 5 U.S.C. § 552(b)(5).

¹⁸ See generally *Citizens for Responsibility and Ethics in Washington*, Case No. FIA-13-0010, at 2-3 (Dep’t of Energy Mar. 20, 2013), available at <http://energy.gov/sites/prod/files/FIA-13-0010.pdf>.

¹⁹ See *Judicial Watch v. USPS*, 297 F.Supp.2d 252, 259 (D.D.C. 2004) (when invoking the deliberative process privilege, an agency must also either “pinpoint an agency decision or policy to which the document contributed,” or “identify a decisionmaking process to which a document contributed.”) (internal citations omitted).

²⁰ IRS Final Response, *supra* note 10, at 1.

²¹ 5 U.S.C. § 552 (b)(6) (2006).

²² *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002).

²³ *Bd. of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 399 (D.C. Cir. 1980); *Rural Hous. Alliance v. U.S. Dep’t of Agric.*, 162 U.S. App. D.C. at 126, 498 F.2d at 77 (1974).

Mr. Steven T. Miller
 April 8, 2013
 Page 5

Cause of Action seeks information related to unauthorized and statutorily authorized requests by the President and executive agencies for taxpayer information. Information about such requests is categorically different from the information contained in PMSF. Thus, information responsive to our FOIA request would not be found in PMSF, as described in the FOIA statute. Moreover, even if the information we requested was contained in PMSF as set forth in Exemption 6, its disclosure would not “constitute a clearly unwarranted invasion of personal privacy.”²⁴ The Supreme Court has noted that a simple invasion of personal privacy is insufficient to withhold materials responsive to a FOIA request:

[N]onconfidential matter [is] not to be insulated from disclosure merely because it was stored by an agency in its “personnel” files. Rather, Congress sought to construct an exemption that would require a balancing of the individual’s right of privacy against the preservation of the basic purpose of the Freedom of Information Act “to open agency action to the light of public scrutiny.”²⁵

In asserting this exemption, the IRS has improperly weighed the interests between disclosure and individuals’ personal privacy. Cause of Action is requesting documents that relate to the unauthorized and statutorily authorized requests for taxpayer information by the President and executive agencies and the public has a very strong interest in knowing when such information has been requested. Therefore, release of information regarding authorized and unauthorized requests for taxpayer information does not constitute a clearly unwarranted invasion of personal privacy and strongly tips the balance in favor of disclosure.

The IRS’s Search Was Deficient

CoA requested all communications to and/or from any employee of the IRS “concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g)” and all documents “referring or relating to [those] communication[s]” between the dates of January 1, 2009, to October 9, 2012.²⁶ Upon analyzing the final production transmitted by the IRS, it became clear that the IRS improperly withheld, in full, documents concerning a FOIA request relating to IRC section 6103(g) that was submitted by Citizens for Responsibility and Ethics in Washington (CREW) in 2012.²⁷

The IRS either failed to undertake an adequate search “reasonably calculated to uncover all relevant documents,”²⁸ or failed to disclose that it withheld responsive documents—both of which are impermissible under the law.²⁹ In accordance with FOIA, the IRS must provide the

²⁴ 5 U.S.C. § 552(b)(6) (2006).

²⁵ *Bd. of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 399 (D.C. Cir. 1980).

²⁶ CoA’s FOIA Request, *supra* note 3, at 2 (emphasis added).

²⁷ Email from A.M. Gulas, Senior Counsel, Internal Revenue Service, to Deborah Lambert-Dean, Attorney, Internal Revenue Service (Oct. 4, 2012) (“I don’t have the request in front of me, but Jenny Black and I had the same problem [section 6103(g) data] with the CREW FOIA request earlier this year...”), *Ex. 1*.

²⁸ *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

²⁹ 5 U.S.C. § 552(a)(6)(F) (“In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied”); *Juda v. U.S. Customs*

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withheld documents as they are clearly within the scope of CoA's October 9, 2012 FOIA request.

The IRS Improperly Limited the Scope of Its Search

The IRS improperly limited the scope of its search for documents responsive to Items 3 and 4 of CoA's October 9, 2012 FOIA Request. CoA requested any communications by or from the Executive Office of the President requesting taxpayer or "return information" that were "not made pursuant to I.R.C. § 6103(g)," as well as all documents "referring or relating to [those] communication[s]," between the dates of January 1, 2009, to October 9, 2012.³⁰ However, upon review of the IRS's final response, it is apparent that the agency construed CoA's request to apply to statutorily authorized requests—namely "tax checks" authorized by IRC section 6103(c).³¹ The IRS did not indicate that it searched for unauthorized requests by the White House for taxpayer or return information, which would clearly be covered by the plain language of CoA's request.

The IRS failed to undertake an adequate search "reasonably calculated to uncover all relevant documents."³² While "[n]othing in the law requires the agency to document the fate of documents it cannot find,"³³ the agency cannot impose restrictions on its search that inaccurately reflect the request submitted.³⁴ In the present matter, the IRS conducted an unreasonably narrow search given the language of CoA's request, and the search was not reasonably calculated to uncover all White House requests made outside the scope of IRC section 6103(g), including any requests not authorized by statute. In accordance with FOIA, the IRS must revise its search such that it is reasonably calculated to uncover all documents within the scope of Items 3 and 4 of CoA's FOIA request.

Service, 2000 WL 1093326 (D.C. Cir. 2000) (agency improperly limited search where it "fail[ed] to pursue clear leads to other existing records"); 5 U.S.C. § 552(a)(6)(A)(i) (agency must notify requestor "of such determination and the reasons therefor"); 10 C.F.R. § 1004.7(b)(1) (agency must reference the specific exemption authorizing withholding, provide a brief explanation of its application to the records withheld, and provide a statement of why discretionary release is not appropriate); *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242 (D.C. Cir. 1977).

³⁰ CoA's FOIA Request, *supra* note 3, at 2 (emphasis added).

³¹ IRS Final Response, *supra* note 10, at 2-3.

³² *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

³³ *Roberts v. U.S. Dep't of Justice*, No. 92-1707, 1993 U.S. Dist. LEXIS 1249, at *5 (D.D.C. Jan. 28, 1993).

³⁴ See, e.g., *Charles v. Office of Armed Forces Medical Examiner*, 730 F. Supp. 2d 78 (D.D.C. 2010) (improper narrowing of search can render that search unreasonable); *Utahamerican Energy, Inc. v. Mine Safety and Health Admin.*, 725 F. Supp. 2d 78 (D.D.C. 2010) (search inadequate if limited to a more narrow category than requester specified).

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The IRS Improperly Claimed Exemption Three

The IRS improperly relied on FOIA exemption (b)(3) to withhold records responsive to Items 3-6 of CoA's FOIA request, claiming that all responsive documents are "taxpayer specific" and therefore subject to the "confidentiality provisions of IRC section 6103..."³⁵

FOIA exemption (b)(3) allows an agency to withhold information that is prohibited from disclosure by another federal statute, so long as one of two requirements is met: the statute either "(A) requires the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."³⁶ It is well settled that IRC section 6103(a), in conjunction with FOIA exemption (b)(3), exempts taxpayer returns and return information from disclosure.³⁷ However, not all tax-related information is protected from disclosure under section 6103(a).³⁸ The *specific* information sought by FOIA must fall within the scope of the statutory exemption.³⁹

In this instance, the IRS has claimed that IRC section 6103(a) exempts (1) all documents relating to White House requests for taxpayer or return information, and (2) all documents relating to Executive Branch requests for taxpayer or return information pursuant to IRC section 6103(i)(1), (i)(2) or (i)(3). Section 6103(a) protects the confidentiality of "return[s]" and "return information," limiting the definition of "return information" to:

[A] taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.⁴⁰

In this context, a communication requesting return information does not itself constitute return information. The purpose of section 6103(a) is to protect tax information. Yet a request by the White House or the Executive Branch does not include the nature or source of any tax-

³⁵ IRS Final Response, *supra* note 10, at 3.

³⁶ 5 U.S.C. §552(b)(3) (2012).

³⁷ See, e.g., *Church of Scientology of Cal. v. IRS*, 792 F.2d 146, 150 (D.C. Cir. 1986), *aff'd*, *Maxwell v. Snow*, 409 F.3d 354 (D.C. Cir. 2005).

³⁸ *Tax Analysts & Advocates v. IRS*, 505 F.2d 350 (excludes letter rulings); *Fruehauf Corp. v. IRS*, 566 F.2d 574 (6th Cir.) (excludes letter rulings and background files of those rulings); *Arthur Anderson, Inc. v. IRS*, 514 F. Supp. 1173 (D.D.C. 1983) (copies of deposit slips and checks); *Stephenson v. IRS*, 629 F.2d 1140 (5th Cir. 1980) (computer tapes IRS prepared for tax compliance measures); *Tax Analysts v. IRS*, 117 F.3d 607 (D.C. Cir. 1997) (Field Service Memoranda IRA prepares).

³⁹ See *C.I.A. v. Sims*, 471 U.S. 159, 167 (1985) (for an agency to properly withhold documents under Exemption 3, the statute itself must qualify as an Exemption 3 statute, and the records in question must fall within the scope of the statute).

⁴⁰ IRC § 6103(a)(b)(2) (emphasis added).

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related information; it is not for the processing of the return or for tax investigation; and it is not data with respect to a return or liability. Rather, an authorized “tax check” by the White House is made for the sole purpose of considering the employment of a prospective Presidential appointee,⁴¹ and any request by the Executive Branch under section 6103(i) is made in the context of non-tax criminal investigations and prosecutions.⁴² Cause of Action has no interest in any underlying return information that the IRS provided to the President or the Executive Branch. Since it is the IRS, not the President or his Administration, that is charged with the administration and enforcement of our nation’s tax laws, any requests that the White House or Executive Branch made could not possibly relate to “the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title,” or to “whether the taxpayer’s return was, is being, or will be examined.”

The IRS improperly categorically denied these portions of CoA’s FOIA request under FOIA exemption (b)(3) since CoA’s FOIA Request does not seek “return information” protected by the confidentiality provisions of IRC section 6103. In accordance with FOIA, the IRS must provide the withheld documents as they are clearly responsive to Items 3-6 of CoA’s FOIA request.

Segregability

The IRS failed to release reasonably segregable portions of the records responsive to Items 1-6 of CoA’s FOIA Request. FOIA requires that all non-exempt information be disclosed, and that agencies conduct a segregability review of responsive records to determine if any portions of the records withheld may be disclosable:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions of which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of information deleted shall be indicated at the place in the record where such deletion is made.⁴³

Agencies cannot justify withholding an entire document simply by showing that it contains some exempted material.⁴⁴ In determining segregability agencies must construe the exemptions narrowly, with the emphasis on disclosure.⁴⁵ Yet, in the present matter, many of the documents are withheld in their entirety. Other documents have redactions covering all but minor portions of the documents. It is highly likely that non-exempt material is contained within the documents currently withheld in their entirety.

⁴¹ Final Response Letter, *supra* note 10, at 2; *see also* IRC § 6103(g)(2).

⁴² Final Response Letter, *supra* note 10, at 3.

⁴³ 5 U.S.C. § 552(b).

⁴⁴ *See Wightman v. Bureau of Alcohol, Tobacco & Firearms*, 755 F.2d 979, 982-83 (1st Cir. 1985).

⁴⁵ *Id.* at 982.

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The IRS also failed to provide adequate justification for failing to segregate the non-exempt materials from the exempt materials. An agency must adequately describe the exempted material, "correlating the claimed exemptions to particular pages in the documents."⁴⁶ The withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.⁴⁷ In the present matter, the only description provided to CoA was the exemption number listed on certain partially redacted documents. No other explanation was provided. Without further information, CoA and the public at large will not enjoy the government "sunshine" which FOIA was fundamentally intended to encourage.

Both the segregability requirements and the requirement to provide adequate justification for withholding non-exempt materials are not satisfied the IRS's final response.

Conclusion

Because the IRS improperly withheld responsive documents, in part and in full, CoA asks the IRS to produce all documents, without redactions, that are responsive to CoA's October 9, 2012 FOIA request. If the IRS maintains that certain materials within such documents remain exempt, CoA asks the IRS to segregate and disclose the non-exempt material contained within such documents or otherwise provide adequate justification for withholding such non-exempt materials. The IRS must also revise its search such that it would be reasonably calculated to uncover all of the relevant documents. Finally, CoA asks that the IRS waive all fees associated with production in response to this letter.⁴⁸

In the event that this appeal is denied, the IRS is required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter.⁴⁹ Time is of the essence; if this appeal is denied or the IRS's response is not forthcoming within 20 working days,⁵⁰ Cause of Action reserves its rights under FOIA to seek judicial review, including the award of attorney's fees. We await your prompt reply.

Sincerely,


 Karen Groen Olea
 CHIEF OVERSIGHT COUNSEL

⁴⁶ *Schiller v. NLRB*, 964 F.2d 1205, 1209 (D.C. Cir. 1992).

⁴⁷ *Id.* at 1210.

⁴⁸ See IRS Final Response, *supra* note 10, at 4 (granting CoA's fee waiver request for F13286-0081).

⁴⁹ 5 U.S.C. § 552(a)(6)(A)(ii); 26 C.F.R. § 601.702(c)(10)(iii).

⁵⁰ *Id.*

EXHIBIT 1:

Email from A.M. Gulas, Senior Counsel, IRS, to Deborah Lambert-Dean, Attorney, IRS

Dated October 4, 2012

From: Lambert-Dean Deborah C
To: Gulas A M;
Subject: RE: lawsuit inquiry (Cause of Action)
Date: Thursday, October 04, 2012 9:17:51 AM

Yes. I noticed the press release too. [REDACTED]

out of scope

Deborah Lambert-Dean
Attorney, Branch 6
Procedure & Administration
202-622-4684 (phone)
202-622-4520 (fax)

From: Gulas A M
Sent: Thursday, October 04, 2012 11:16 AM
To: Lambert-Dean Deborah C
Subject: RE: lawsuit inquiry (Cause of Action)

I don't have the request in front of me, but Jenny Black and I had the same problem with the CREW FOIA request earlier this year. [REDACTED]

(b)(5)

From: Lambert-Dean Deborah C
Sent: Thursday, October 04, 2012 11:11 AM
To: Gulas A M
Subject: RE: lawsuit inquiry (Cause of Action)

Excellent, thank you. Carmen hasn't tried to resend me the exhibits yet. But from looking at the letter, don't you think they are just asking for g data. (I know you said Sarah thought it would capture the (c) tax check info).....But looking at the wording in page 2, paragraph 2, they talk about all info sent to the director, GLD--those are procedures listed in the IRM on (g).

Deborah Lambert-Dean
Attorney, Branch 6
Procedure & Administration
202-622-4684 (phone)
202-622-4520 (fax)

EXHIBIT

7

Date: 4/22/13

KAREN GROEN OLEA
(CAUSE OF ACTION)
1919 PENNSYLVANIA AVE NW STE 650
WASHINGTON, DC 20006

Person to Contact:

Diane Ambriz
Employee ID Number: 1000157666
Tel: 559-253-4840
Fax: 559-253-4880

Refer Reply to:

AP:FW:FRC:DMA

In Re:

Freedom of Information Act

FOIA CASE NUMBER:

F13286-0081

Dear Karen Groen Olea:

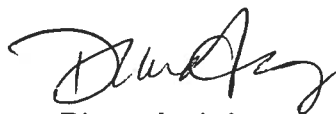
This letter is our acknowledgement that on April 17, 2013 we received your Freedom of Information Act (FOIA) administrative appeal, dated April 8, 2013. We are required to complete our consideration of your appeal within 20 business days after the date we receive your appeal. If we are unable to complete your case in that time frame, you may seek judicial review by properly filing suit in the United States District Court in the district where you live or work, where your records are located or in the District of Columbia. The rules for filing such suit are set forth in Federal Rule of Civil Procedure 4(i).

It may take several weeks to retrieve the pertinent documents from the Disclosure Office. We will then complete our review and notify you in writing of our decision and of any judicial remedies that may be available to you. We apologize for any delay in responding to your request.

If you decide to file suit with the Court while we are considering your case, please advise this office in writing of your action. Once notified, we will terminate our consideration of your FOIA appeal and transfer jurisdiction to the Court.

In the interim, if you have any questions concerning the status of your appeal, please contact the Appeals Officer whose name and telephone number are listed above.

Sincerely,



Diane Ambriz
Appeals Officer

EXHIBIT

8

Internal Revenue Service
Appeals Office M/S 55203
5045 E Butler Ave
Fresno, CA 93727-5136

Date: **MAY 06 2013**

KAREN GROEN OLEA
(CAUSE OF ACTION)
1919 PENNSYLVANIA AVE NW STE 650
WASHINGTON, DC 20006

Department of the Treasury

Person to Contact:

Diane Ambriz
Employee ID Number: 1000157666
Tel: (559) 253-4840
Fax: (559)-253-4880

Refer Reply to:

AP:CO:FRC:DMA

In Re:

Freedom of Information Act

Disclosure Case Number(s):

F13286-0081

Tax Period(s) Ended:

1/1/2009 to 10/9/2012

Dear Karen Groen Olea:

This letter is in response to your appeals request dated April 8, 2013 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of March 4, 2013 from the Disclosure Office of your original request for information dated October 9, 2012.

You requested 8 items from the time period of January 1, 2009 to October 9, 2012. You requested:

- 1) All documents, including e-mails, letters, and telephone logs or other telephone records, constituting communications to and from any employee of the IRS concerning any FOIA request or lawsuit that relates to IRC section 6103(g).
- 2) All documents, including notes and emails, referring or relating to any communications described in request #1.
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or return information within the meaning of IRC section 6103(a) that is made in pursuant to IRC §610.
- 4) All documents, including notes and emails, referring or relating to any communications described in request #3.
- 5) All requests for disclosure by any agency pursuant to IRC sections 6103(i)(1),(i)(2), and (i)(3)(4).
- 6) All documents, including communications not limited to notes and emails, letters, memoranda and telephone logs or other telephone records, referring or relating to any communications described in request #5.
- 7) All documents, including but not limited to notes and emails, letters, telephone logs, and reports pertaining to any investigation by TIGTA into the unauthorized disclosure of §6103 return information to anyone in the Executive Office of the President and
- 8) From the time period of March 27, 2012, to the present, all documents, including email communications, constituting or relating to a request by the President or any one designated by the President in his Executive Office for tax records under §6103(g)(1).

The Disclosure Office located 796 pages in response to a portion of your request and enclosed 790 pages in a CD. Disclosure withheld 289 pages in part and 6 pages in full under FOIA exemptions (b)(5) and (b)(6). Disclosure also withheld pages in part that were outside the scope of your request.

The Disclosure Office explained FOIA exemptions (b)(5) and (b)(6). Disclosure properly explained IRC §6103(g).

FOIA exemption (b)(5) exempts from disclosure inter-agency or intra-agency memorandum or letters which would not be available by law to a party other than an agency in litigation with the agency. The three primary privileges covered by this exemption were explained as follows:

1. The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters. 2. The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation and 3. The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

FOIA exemption (b)(6) exempts from disclosure files that if released would clearly be an unwarranted invasion of personal privacy, which is based on the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

Disclosure responded to your request in items 3 and 4, requesting any communications by or from anyone, in the Executive Office of the President constituting requests for taxpayer or return information within the meaning of IRC §6103(a) that is made in pursuant to IRC §6103 and all documents including notes emails, letters, referring or relating to any communications by or from anyone in the Executive Office of the President.

Disclosure explained for the time frame you requested, all requests made to the IRS from White House Personnel were for tax checks. The requests were made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. All tax checks are conducted by the IRS at the request of the White House and all such disclosures to the White House of taxpayer specific information with respect to such tax checks are made pursuant to the written consent of the prospective employee who signs a waiver authorizing the disclosure of their return information under IRC section 6103(c). Information with respect to any of the request is taxpayer specific and subject to the confidentiality provisions of IRC §6103 and was withheld under FOIA exemption (b)(3) in conjunction with IRC § 6103(a).

Disclosure responded to items 5 and 6 of your requests regarding all request, documents, emails, letter, etc. for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2) and (i)(3)(a).

Disclosure explained IRC section 6103(i) concerning disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Disclosure explained IRC 6103 (i)(1) that such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice.

Disclosure stated under IRC 6103 (i)(2), that disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel and under IRC section 6103(i)(3), the IRS may make disclosures at their own initiative when necessary to enforce a federal non-tax criminal law, when there is danger or imminent death or physical injury or for purposes of thwarting terrorist activities.

All three categories are taxpayer specific such that all information pertaining to disclosures under IRC 6103(i)(1), (i)(2) and (i)(3)(a) are protected by the confidentiality provisions of IRC section 6103 and was therefore withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

Disclosure responded to your request in item 7 requesting all documents pertaining to any investigation by TIGTA into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. Disclosure stated they transferred this request to TIGTA because they have jurisdiction over those records.

Disclosure responded to your request in item 8 requesting all documents, emails, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under 6103(g)(1). Disclosure stated the IRS has no record of requests from the White House or President of the U.S. pursuant to IRS 6103(g)(1).

Your appeal dated April 8, 2013 states that IRS improperly withheld six documents in full that were responsive to requested items 1 and 2, claiming FOIA exemptions (b)(5) and (b)(6). You stated the 289 redacted documents were also done improperly. You stated IRS's response did not specify how many of the six withheld-in-full documents were withheld under Exemptions 5 and 6. You stated the IRS improperly relied on FOIA exemptions 5 and 6 as a basis for its withholding and redactions, and its refusal to produce the requested records in full violates FOIA.

You state IRS failed to meet applied Exemption 5 because it did not provide sufficient specificity to permit CoA to understand its rationale for withholding the responsive information.

Your appeal states that IRS improperly applied Exemption 6 and you seek information related to unauthorized and statutorily authorized requests by the President and executive agencies for taxpayer information. You stated in asserting this exemption, the IRS has improperly weighed the interests between disclosure and individuals person privacy.

You stated IRS failed to undertake an adequate search reasonably calculated to uncover all relevant documents or failed to disclose that it withheld responsive documents both of which are impermissible under the law to the requested information related to IRC section 6103(g).

You stated the IRS improperly limited the scope of its search to your item 3 request requesting all communications by or from the Executive Office of the President. You state the IRS did not indicate that it searched for unauthorized request by the White House for taxpayer or return information.

You stated the IRS improperly claimed Exemption (b)(3) because IRS improperly relied on the exemption to withhold records responsive to requested items 3 and 6, claiming that all responsive documents are taxpayer specific and therefore subject to the confidentiality provisions of IRC section 6103. You stated what exemption (b)(3) allows and stated not all tax-related information is protected from disclosure under section 6103(a) and the specific information sought by FOIA must fall within the scope of the statutory exemption.

You stated IRS has claimed that IRC section 6103(a) exempts 1) all documents relating to White House requests for taxpayer or return information and 2) all documents relating to Executive Branch requests for taxpayer or return information pursuant to IRC section 6103(i)(1), (i)(2) and (i)(3). You state a communication requesting return information does not itself constitute return information and the purpose of section 6103(a) is to protect tax information. Yet a request by the White House or the Executive Branch does not include the nature or source of any tax related information, it is not for processing of the return or for tax investigation and it is not data with respect to a return or liability. An authorized tax check by the White House is made for the sole purpose of considering the employment of a prospective Presidential appointee and any request by the Executive Branch under section 6103(i) is made in the context of non-tax criminal investigations and prosecutions. You stated Cause of Action had no interest in any underlying return information the IRS provided to the President or the Executive Branch and since it is the IRS, not the President that is charged with the administration and enforcement of the tax laws, any requests that the White House or Executive Branch made could not possibly related to the determination of the existence, or possible existence, of liability of any person under this title or to whether the taxpayer return was, is being or will be examined. You state IRS improperly categorically denied these portions of your FOIA requests under FOIA exemption (b)(3) since CoA does not seek return information protected by the confidentiality provisions of IRC section 6103 and that IRS must provide the withheld documents as they are clearly responsive to requested items 3 and 6.

You stated IRS failed to release reasonably segregable portions of the records responsive to requested items 1-6. You stated that FOIA requires that all non-exempt information be disclosed, and that all agencies conduct a segregability review of responsive records to determine any portions of the records may be disc losable. You state agencies cannot justify withholding an entire document simply by showing that it contains some exempted material and you state IRS failed to provide adequate justification for failing to segregate the non-exempt materials from the exempt materials.

We have reviewed the response of the Disclosure Specialist, the Disclosure database, as well as the documents withheld and have determined that the response was appropriate. The Appeals office responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and documents requested fall within the FOIA exemption(s) cited. We address the adequacy of the search and the appropriateness of the redactions and the exemptions cited. Our sole responsibility is to determine if the documents were properly withheld under the FOIA.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,



T. Mitchell
Appeals Team Manager